(5)

No. 89-1538

In The

Supreme Court of the United States

October Term, 1989

RANDALL HANK WILLIAMS,

Petitioner,

vs.

CATHERINE YVONNE STONE,

Respondent.

On Petition for Writ of Certiorari
to the Supreme Court of Alabama

MOTION FOR LEAVE TO FILE BRIEF AMICUS CURIAE AND BRIEF AMICUS CURIAE OF AMERICAN COUNCIL ON EDUCATION IN SUPPORT OF PETITIONER

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MOTION OF AMERICAN COUNCIL ON EDUCATION FOR LEAVE TO FILE BRIEF AMICUS CURIAE IN SUPPORT OF PETITIONER

The American Council on Education ("ACE") hereby respectfully moves the Court for leave to file the attached Brief Amicus Curiae in Support of Petitioner in this cause. Respondent Catherine Yvonne Stone has refused consent to the filing of a Brief Amicus Curiae by the ACE. The ACE submits this motion and brief to bring relevant information to the attention of the Court with respect to

the effect of the decision of the Supreme Court of Alabama upon educational and charitable institutions.

Respectfully submitted,

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QUESTIONS PRESENTED

I. WHETHER A "NEW" RULE OF LAW THAT BENEFITS A PREVIOUSLY DISAPPOINTED CLAIMANT TO AN ESTATE IS TO BE APPLIED RETROACTIVELY IN A COLLATERAL ATTACK UPON A CLOSED ESTATE.

II. WHETHER, ABSENT PERSONAL JURISDICTION, ASSERTION OF *IN REM* JURISDICTION OVER PROPERTY SITUATED OUTSIDE OF THE FORUM STATE VIOLATES THE DUE PROCESS CLAUSE OF THE FOURTEENTH AMENDMENT.

III. WHETHER THE FAILURE TO PROVIDE PARTIES, WHOSE RIGHTS TO PROPERTY FROM AN ESTATE HAVE VESTED BY VIRTUE OF A DECREE ISSUED BY A COURT OF COMPETENT JURISDICTION, WITH NOTICE OF AND AN OPPORTUNITY TO BE HEARD IN A PROCEEDING THAT MIGHT ADVERSELY AFFECT THOSE PROPERTY INTERESTS VIOLATES THE DUE PROCESS CLAUSE OF THE FOURTEENTH AMENDMENT.

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BRIEF AMICUS CURIAE OF AMERICAN COUNCIL ON EDUCATION IN SUPPORT OF PETITIONER

INTEREST OF THE AMICUS CURIAE

The American Council on Education ("ACE"), an independent, nonprofit association founded in 1918, represents approximately 1,500 accredited, degree-granting institutions of higher education as well as national and regional higher education associations. Through its programs and activities, and its policy-setting functions, it strives to ensure quality education on the nation's campuses and equal educational opportunity for all Americans.

Testamentary bequests and contributions of property and income derived from decedents' estates constitute a major source of funding for educational and charitable institutions.[1] With governmental support for such institutions on the wane, such philanthropic gifts acquire even greater significance. The American Association of Fund-Raising Counsel Trust for Philanthropy estimates that $6,790,000,000 was given to educational and charitable organizations by means of testamentary bequests in 1988.[2] Other untold billions of the $86,700,000,000 contributed by individuals and the $4,750,000,000 contributed by foundations in 1988 were derived from assets distributed from and traceable to decedents' estates.[3] Approximately $8,350,000,000 in total philanthropic gifts went to institutions of higher learning in 1988 alone.[4]

Since testamentary bequests and contributions of property and income derived from decedents' estates form a significant portion of the funding for ACE member institutions, any challenge to the finality of testamentary distribution orders or attacks upon the ownership of assets distributed from estates are a major concern of the ACE and its member institutions. The recent decision of the Supreme Court of Alabama in the case of *Catherine Yvonne Stone v. Gulf Amer. Fire and Casualty Co.*, 554 So. 2d

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[1] Vanderbilt University alone received over $12,000,000 from testamentary bequests between 1986-1989. Board of Trustees of Vanderbilt University, *Report on Private Giving* (1989).

[2] *Fund Raising Management*, September 1989, p. 19.

[3] *Id.*

[4] G. Fuchsberg, *The Chronicle of Higher Education*, June 14, 1989, p. A31.

396 (Ala. 1989), seriously jeopardizes the title to assets and the income derived therefrom which are distributed from and through decedents' estates and contributed to educational and charitable institutions and dangerously impedes the right of such institutions to protect such property and income. The ACE therefore urges this Court to grant the instant Petition for Writ of Certiorari to review such decision.

SUMMARY OF THE ARGUMENT

The decision of the Supreme Court of Alabama in the case of *Catherine Yvonne Stone v. Gulf Amer. Fire and Casualty Co.*, 554 So. 2d 396 (Ala. 1989), calls into question the finality of distributions from decedents' estates and the ability of distributees and their transferees to defend title to assets derived from such estates. The decision violates the due process rights of the Petitioner and sanctions the possible violation of the due process rights of the holders of former estate assets and the income derived therefrom.

The retroactive application of "new" rules to closed estates violates the due process rights of those persons who are determined by a court of competent jurisdiction to be entitled to receive the assets of the estate. Such application may deprive not only the distributee but his or her transferee of property without due process of law. Assertion by the Alabama Supreme Court of *in rem* jurisdiction over the distributed assets of an estate, without personal jurisdiction over the holder of such assets, is violative of the due process rights of the owner of such assets. Such due process rights are further violated by the Alabama Supreme Court's failure to give Petitioner notice

that his rights would be adjudicated in the appeal before it and, after taking such action, denying him an opportunity to be heard.

The decision of the Alabama Supreme Court unsettles the law of estate administration and approves the violation of the elementary due process rights of all persons interested in assets derived from a decedent's estate. Such decision is, therefore, of major importance to all recipients of estate assets and should be reviewed by this Court.

REASONS FOR GRANTING THE PETITION

I. THE DECISION OF THE ALABAMA SUPREME COURT IS OF NATIONAL CONCERN TO EDUCATIONAL INSTITUTIONS AND OTHER CHARITABLE INSTITUTIONS BECAUSE OF ITS ASSAULT ON THE FINALITY OF ORDERS IN DECEDENTS' ESTATES.

To engage in sound educational and financial planning, charitable institutions, which depend heavily on contributions to fund their operations, must be able to rely on the validity of the gifts that they receive. A major source of gifts for universities and other charitable organizations derives from decedents' estates. In order to realize the benefits of testamentary bequests, educational and charitable organizations must be able to rely upon the integrity of gifts they obtain. They must be able to determine what rights they secure from a bequest in order to make rational plans and to make long-term financial commitments. And, in order to ascertain what rights they have in property transferred to them, charities

must have the ability to determine what rights a transferor has in the property granted to the charity.

Rights to property from an estate are definitively established by the final orders of courts of competent jurisdiction when those court decrees close and distribute the assets of an estate. When non-profit institutions receive a testamentary bequest or a contribution indirectly derived from income or assets from an estate, those institutions may legitimately plan programs and make expenditures in justifiable reliance on the validity of the title being transferred. If a court of competent jurisdiction has finally determined the rights of the parties in an estate proceeding, and title to property from the estate has been transferred to a university (either directly as a distributee of the estate or indirectly from a distributee of the estate), the divestiture of a university's assets as a result of a collateral proceeding that calls into question the propriety of the original distribution of the estate is very disruptive to the financial well-being of a university or any charity. Indeed, a cornerstone of a charity's ability to realize the benefits from a donation that derives from an estate is that institution's ability to rely on the validity and integrity of the underlying title to the property transferred. Absent that form of security and absent an ability to rely on the conclusiveness of court orders that close an estate and distribute its assets, a university would make financial commitments with great reluctance and at great risk.

The important state interests in the orderly disposition of decedents' estates and in the finality of the distribution of assets of closed estates were recognized by this Court in *Reed v. Campbell*, 476 U.S. 852, 855 (1986). These

interests are equally applicable to beneficiaries of testamentary bequests and related donations. Just as this Court has recognized that public policy demands an end to litigation, *Federated Department Stores, Inc. v. Moitie*, 452 U.S. 394, 401 (1981), there must be a point at which distributions from decedents' estates may no longer be challenged on the ground that the law has changed in a way favorable to one of the disappointed claimants to an estate. *Cf. Evans v. Abney*, 396 U.S. 435 (1970) (declining to require alteration of racially discriminatory terms of a will through application of cy pres doctrine).

Educational and charitable institutions develop both long range and short term financial strategies, and make financial, program, personnel and building commitments based upon the certainty of title to identifiable property which is received through testamentary bequests or related donations. In certain situations, such as in this case where the copyrights in dispute can be expected to bring in revenues for years to come, title to property ensures a stream of income which can form the basis for long-term programmatic and financial commitments for charitable institutions. Because it undermines the fiscal foundation upon which such plans are built, the decision of the Alabama Supreme Court places in jeopardy development plans that rely on donations. That, in turn, could cause fiscal hemorrhages for the institutions that conceived those plans and made commitments to implement them. If such a decision should stand, educational and charitable institutions will no longer be able to anticipate income from donated property derived from closed estates in endowing chairs, establishing scholarships or contracting for capital improvements. Such projects would be

undertaken only if back-up funding sources were available. That would hamper the ability of such institutions to fulfill their educational or charitable missions and significantly impair their ability to respond to new opportunities or to cope with pressing needs. Scholars of nonprofit enterprise point to lack of access to capital markets and slow response to changed needs and circumstances as some of the major drawbacks of the nonprofit form of organization. *See* Hansmann, *Reforming Nonprofit Corporation Law*, 129 U. PA. L. REV. 497, 501-11 (1981). The Alabama Supreme Court's decision would exacerbate that tendency or weakness in nonprofit institutions, to the detriment of those who depend on the important work done by those nonprofit organizations.

By permitting a collateral attack to reopen an estate closed for more than ten (10) years and by retroactively applying "new" rules to the administration of such estate so as to change the already-vested interests of the beneficiaries, the Alabama Supreme Court casts doubt upon the title to specific property derived from such estate and donated to an educational or charitable institution. That would affect the sanctity of a university's title to property whether donated directly by the testator or by a beneficiary who received such property from the estate. Thus, the implications for a university would be the same whether Hank Williams, Sr. had bequeathed funds to a university to endow a chair in country music or whether Hank Williams, Jr. had given a portion of his inheritance to a university to endow a chair in country music named for his father. In either case, the university would be in a difficult position, even after Hank Sr.'s estate was closed

by court decree. Should the university hire a distinguished scholar in the field of country music and commit the funds to pay a salary for the life of the chairholder, knowing that those funds could be at risk if a disappointed claimant to the estate subsequently asserted a newly created right and thereby sought to reopen the estate and undo the previous distribution? Or should the university refuse to make such a commitment and deprive its students of the opportunity to have the benefit of exposure to a nationally recognized scholar in country music? Such fiscal conservatism, while prudent under the Alabama decision in this case, would be contrary to the interests of all involved in university life.

Unbridled retroactive application of "new" rules to closed estates would permit potential claimants to set aside testamentary bequests and deprive beneficiaries of their title to identifiable property upon any change in the law. Even the unique remedy fashioned by the Alabama Supreme Court would not alleviate the problem. If the donation consisted of income-producing property or the right to receive income from income-producing property such as copyright royalties, any diminution in the interest of the donor would correspondingly reduce the value of the donation to the institutional beneficiaries.

This Court has previously recognized the importance of the question of retroactive application of "new" rules to closed estates by granting certiorari in *Reed v. Campbell*, 476 U.S. 852 (1986). Because that case involved an open estate, however, the issue was left open. The instant case provides an excellent vehicle for the Court to establish the rational line that "new" rules will not be retroactively applied to estates which have been closed by appropriate

orders of courts of competent jurisdiction so as to alter the distribution of the assets of the estate.

This Court has recently undertaken to rationalize the law of retroactivity in the area of criminal constitutional law by drawing a bright line between cases on direct review and matters raised on collateral attack. *Compare Teague v. Lane*, 109 S. Ct. 1060, *reh'g denied*, 109 S. Ct. 1771 (1989) *with Griffith v. Kentucky*, 479 U.S. 314 (1987). This bright-line principle has also been recognized in the civil area. *See Bradley v. School Board*, 416 U.S. 696, 710-11 (1974) (recognizing the distinction in civil retroactivity between a "change in the law that takes place while a case is on direct review . . . and its effect on a final judgment under collateral attack. . . ."). Clearly, the general issue of civil retroactivity is important, and, given *Reed v. Campbell*, the specific issue of retroactivity in the context of a closed estate warrants review. This case provides an excellent vehicle for this Court to address these issues and thereby alleviate a significant risk for the financial well-being of universities and other nonprofit institutions that rely so heavily on estate-derived donations.

II. THE ALABAMA SUPREME COURT'S ASSERTION OF *IN REM* JURISDICTION OVER THE DISTRIBUTED ASSETS OF A CLOSED ESTATE CONFLICTS WITH DECISIONS OF THIS COURT AND HAS NATIONAL SIGNIFICANCE FOR EDUCATIONAL AND CHARITABLE BENEFICIARIES OF SUCH ASSETS.

Without personal jurisdiction over the distributee, the Alabama Supreme Court has asserted *in rem* jurisdiction over assets of a closed estate which had been

distributed to a non-Alabama resident. As noted by the Petitioner (Petition at 20), this Court has consistently held that there is no unitary concept to an estate and that a state court's jurisdiction does not extend to and embrace individual estate assets not situated within the territorial jurisdiction of the state. *Overby v. Gordon*, 177 U.S. 214, 222 (1900). *Accord Riley v. New York Trust Co.*, 315 U.S. 343, 353 (1942) (denying "extraterritorial effect upon assets in other states" to an *in rem* judgment). In an intestacy proceeding, this Court has held that the *in rem* effect of a state court judgment is limited to assets within the forum state. *Baker v. Baker, Eccles & Co.*, 242 U.S. 394 (1917). Likewise in *Hanson v. Denckla*, 357 U.S. 235, 250 (1958), this Court declared that a state court has no authority to "enter a judgment purporting to extinguish the interest of [a person over whom it has no jurisdiction] in property over which the Court has no jurisdiction." Yet that is precisely what the Alabama Supreme Court purported to do.

The ramifications of such conduct are not limited to whether or not the Petitioner in this case is to be deprived of his property by the Alabama Supreme Court without proper jurisdiction. Under the Alabama rule, the beneficiary of any bequest or donation of property derived from an estate of an Alabama decedent may be forced, without personal jurisdiction, to defend its interest in such property in Alabama or risk losing it. The sweep of this analysis would remain applicable whether the property is a direct bequest from an estate or is donated by a beneficiary of the estate or even by an unrelated third party who may or may not have any connection with the state

of Alabama, so long as the property had its beginnings in an Alabama estate.

Such conduct clearly violates due process under *Hanson v. Denckla; Riley v. New York Trust Co.; Baker v. Baker, Eccles & Co.*; and *Overby v. Gordon*. Further, it is an end-run around *Shaffer v. Heitner*, 433 U.S. 186, 206 (1977), which held that due process rights "cannot depend on the classification of an action as *in rem* or *in personam*," and will undermine and promote disregard for *Shaffer*'s core principles. Finally, it is extremely burdensome to the educational and charitable institution donee/beneficiary, and, coupled with the lack of notice provided by the Alabama Supreme Court, places all such bequests and gifts in jeopardy.

III. THE DECISION OF THE ALABAMA SUPREME COURT DOES NOT PROVIDE EDUCATIONAL AND CHARITABLE INSTITUTIONS, WHOSE RIGHTS IN PROPERTY MAY BE ADVERSELY DETERMINED, WITH AN OPPORTUNITY TO PROTECT THOSE RIGHTS IN CONFLICT WITH PRIOR DECISIONS OF THIS COURT.

Just as the Alabama Supreme Court deprived Petitioner of a portion of the income derived from the assets of his father's long-closed estate without providing him with notice and an opportunity to be heard, educational and charitable institutions could be deprived of specific identifiable property distributed from an estate and the income stream derived therefrom without an opportunity to protect such property and income. If unchallenged, the actions of the Alabama Supreme Court go beyond depriving Petitioner of income derived from the distributed

assets of his father's estate. They place a cloud over the billions of dollars in annual direct bequests from estates to educational and charitable institutions and the untold billions of dollars in income and property which are derived from assets distributed from decedents' estates and donated by individuals or foundations.

Since 1950, when this Court decided *Mullane v. Central Hanover Bank & Trust Co.*, 339 U.S. 306 (1950), this Court has recognized that prior to taking action that will determinatively affect an interest in property protected by the Due Process Clause of the Fourteenth Amendment, a state must provide notice to interested parties of the pendency of such action and afford them an opportunity to present their objections. Such principle applies whether the action is *in rem* or *in personam*. *See Shaffer v. Heitner*, 433 U.S. 186, 206 (1977). This "elementary and fundamental requirement of due process" has recently been applied to the opportunity of a mortgagee to defend against tax sales, *Mennonite Board of Missions v. Adams*, 462 U.S. 791 (1983), and to the opportunity of a creditor to present claims against a decedent's estate, *Tulsa Professional Collection Services v. Pope*, 485 U.S. 478 (1988).[5] Surely such due process requirements extend to the owner of assets distributed from an estate pursuant to orders of a court of competent jurisdiction.

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[5] A challenge to the decision of the Wyoming Supreme Court not to require that notice of a sale of trust assets be given to the remainder beneficiary of a trust, *Estate of Jones*, 782 P.2d 229 (Wyo. 1989), is currently before this Court on Petition for Writ of Certiorari. *Shriners' Hospitals for Crippled Children v. First Security Bank*, No. 89-1444.

Despite this Court's decisions, the Alabama Supreme Court assumes the power to reopen a closed estate and, for whatever reason, reallocate the distribution of prior estate assets without providing the lawful owner of such assets with notice that his rights were being determined and without providing him an opportunity to be heard. Without inquiry regarding the possible further distribution of such assets or the income derived therefrom – and therefore in disregard of any rights that such transferees would have as a result of the further distribution –, the Alabama Supreme Court stripped the Petitioner of one-half of the income derived from assets of his father's estate. At a minimum, Petitioner was entitled to notice and an opportunity to be heard.

It takes little imagination to realize the immense ramifications of the actions of the Alabama Supreme Court if they are left unchallenged. If Petitioner or any distributee of estate assets had donated such assets or the income derived therefrom to an educational or charitable institution, the income which such institution had relied upon could be removed or drastically reduced without any interested party having the opportunity to object to such action or otherwise be heard. The very real threat to a significant portion of their funding severely diminishes the ability of such institutions to plan for the utilization of such funds in either the short or long term without sufficiently secure reserve funding.

CONCLUSION

The decision of the Supreme Court of Alabama goes far beyond determining the ownership interest in the income derived from specific assets of an estate. It threatens the orderly administration of decedents' estates and the finality of any distribution of assets of a testamentary estate even after an estate has been closed by court order. If not overturned, the decision of the Supreme Court of Alabama could serve as precedent to question the validity, integrity, and finality of billions of dollars of bequests and contributions to educational and charitable institutions of income and property derived from decedents' estates. For the reasons stated herein, the Court is urged to grant certiorari.

Respectfully submitted,

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